IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO

JEANNE K. LEE,	:	APPEAL NO. C-150580 TRIAL NO. DV1000910
Petitioner-Appellee,	:	*JUDGMENT ENTRY.*
vs.	:	
RICHARD D. ELLISON,	:	
Respondent-Appellant.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court. *See* S.Ct.R.Rep.Op. 2; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.1.

Respondent-appellant Richard Ellison appeals the judgment of the Hamilton County Common Pleas Court, Domestic Relations Division, overruling his objections and adopting the magistrate's decision granting his 90 year-old mother, petitioner-appellee Jeanne K. Lee, a five-year extension of a domestic-violence civil protection order ("DVCPO") against him.

The record reveals that Lee originally filed a pro se petition for an ex parte DVCPO against Ellison in July 2010, just prior to Ellison's release from prison for serving a six-year sentence for the aggravated burglary, abduction, and kidnapping of Lee and her husband. A magistrate issued an ex parte temporary DVCPO. Following a full hearing on Lee's petition, the magistrate granted Lee and her husband a five-

year DVCPO. The trial court adopted the magistrate's decision on August 10, 2010. Ellison did not appeal the grant of the DVCPO.

On July 21, 2015, Lee filed a motion seeking a five-year extension of the 2010 DVCPO against Ellison, which was set to expire August 10, 2015. The matter was set for a full hearing before the magistrate. Ellison filed a response to Lee's motion to extend the DVCPO as well as a motion seeking to continue the matter. The magistrate set a hearing on Ellison's motion for the same date as the hearing on Lee's motion. Ellison did not appear at the hearing, but Lee did. The magistrate heard testimony from Lee and granted her motion to extend the DVCPO for another five-year term. The magistrate denied Ellison's motion for a continuance for lack of prosecution.

Ellison filed timely objections to the magistrate's decision. He argued that the magistrate had erred by extending the DVCPO because there was insufficient evidence to substantiate Lee's claims of domestic violence. Ellison also attacked Lee's credibility, and argued that he had presented evidence by way of his court filings that contradicted Lee's testimony. Ellison additionally objected to the magistrate's decision, arguing it was based on the magistrate's "immediate and complete sympathy" for Lee based on the "meek and kindly" persona Lee had presented at the hearing before the magistrate.

Ellison, however, failed to file a transcript of the evidence from the magistrate's hearing in support of his objections to the magistrate's decision. The trial court overruled Ellison's objections and it adopted the magistrate's decision extending the DVCPO for another five-year term.

In his first assignment of error, Ellison argues the trial court erred by summarily denying his objections to the magistrate's decision. In his second assignment of error, Ellison argues the trial court erred by failing to "fully and fairly consider the implications of the contradictions within [Lee's] case."

R.C. 3113.31(E)(3)(c) provides that "[a]ny protection order issued * * * pursuant to this section may be renewed in the same manner as the original order or agreement was issued or approved." Civ.R. 65 governs the procedures for civil protection orders under R.C. 3113.13. *See* Civ.R. 65(A); *Heimann v. Heekin*, 1st Dist. Hamilton No. C-130613, 2014-Ohio-4276, ¶ 5. Civ.R. 65(F)(3)(d)(iii) and (iv) require a party who challenges the sufficiency or weight of the evidence supporting the grant of a protection order in objections to the trial court to file a transcript of the evidence submitted to the magistrate.

While Ellison has filed the transcript of the hearing before the magistrate in this court with his appeal, the trial court never had the opportunity to review the transcript when considering his sufficiency and weight-of-the evidence objections to the magistrate's decision. In the absence of a transcript, the trial court was incapable of conducting an independent review of the evidence before the magistrate, and was therefore, required to defer to the magistrate's factual findings and its determinations regarding Lee's credibility. Likewise, this court is precluded from considering the transcript of the magistrate's hearing to support any factual or weight-of-the evidence objections to the magistrate's decision. *See State ex rel. Duncan v. Chippewa Twp. Trustees*, 73 Ohio St.3d 728, 730, 654 N.E.2d 1254 (1995); *Cwik v. Cwik*, 1st Dist. Hamilton No. C-090843, 2011-Ohio-463, ¶ 52. Based upon our review of the record, we cannot conclude the trial court erred in affirming

the magistrate's decision. We, therefore, overrule Ellison's first and second assignments of error and affirm the judgment of the trial court.

Further, a certified copy of this judgment entry shall constitute the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

HENDON, P.J., CUNNINGHAM and **STAUTBERG, JJ.**

To the clerk:

Enter upon the journal of the court on May 13, 2016

per order of the court _____.
Presiding Judge